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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act --)	
Competitive Bidding for)	
Commercial Broadcast and ITFS)	
Licenses)	
)	
Reexamination of the Policy)	
Statement on Comparative)	
Broadcast Hearings)	GC Docket No. 92-52
)	
Proposals to Reform the FCC's)	
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	GEN Docket No. 90-264

To: John Riffer, Esq.
Office of General Counsel (Room 610)

COMMENTS OF R & S Media ET AL

R & S Media, Apple Maggot Broadcasting Company ("AMBC") et al^{1/} respectfully submit these comments in the above-captioned Notice of Proposed Rulemaking, released Nov. 26, 1997 ("NPRM").

Summary

These Comments address only the question of the FCC's discretion under the Balanced Budget Act of 1997 ("BBA") to approve "pre-acceptance" mergers or other settlements among broadcast applicants filing after July 1, 1997. The NPRM misconstrues the BBA of 1997 and thus misperceives the FCC's discretion.

^{1/} These Comments are also filed on behalf of other clients of the undersigned counsel who are at this time attempting to negotiate private settlements among "post-July 1, 1997 applicants" for various other broadcast facilities.

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Discussion

Congress recently expressed its interest in expediting new broadcast service to the public and in eliminating the FCC's backlog of comparative broadcast cases. Long frustrated by delays in FCC comparative hearing cases (stemming from a 1994 court decision) and, eager to assist the FCC in promptly resolving applications for new broadcast facilities, Congress enacted a 1997 Budget Bill that provides, inter alia, that the FCC should attempt to resolve its pending comparative broadcast proceedings and speed new broadcast service to the public. See Section 3002 (a)(3) of the Balanced Budget Act of 1997, Pub. Law No. 105-33, 111 Stat. 251 (1997). The legislation expressly directs the FCC to give long pending broadcast applications a "settlement window" of 180 days (until February 1, 1998) and, thereafter, to auction any remaining unlicensed broadcast spectrum.

For broadcast applications filed after July 1, 1997, the new legislation directs the FCC to auction spectrum where two or more mutually exclusive applications are "accepted" by the agency. Id. at Section 3002(a)(1)(A)(1) ("If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection," emphasis added.)

R & S Media's post-July 1st application for a new FM station at Homedale, ID and AMBC's post-July 1st application for a new FM station at Naches, WA each has been received by the FCC but neither has been "accepted for tender" much less "accepted for filing" by the FCC. Since the BBA requires the FCC to auction only those post-July 1st mutually exclusive applications that have been "accepted" by the FCC, supra, the FCC should construe the BBA as granting the FCC the discretion to approve mergers or other settlements that remove the mutual exclusivity prior to the time that such applications are "accepted" by the FCC. See Section 3002(a)(1)(A)(1), supra. ^{2/}

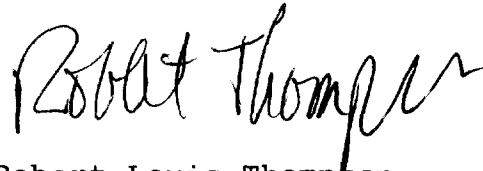
R & S Media and AMBC each filed Settlement Agreements with the FCC last October, seeking FCC consent to remove the mutual exclusivity in their Homedale, ID and Naches, WA cases. In each case, the FCC has the discretion under the BBA to approve the respective settlements and subsequently "accept" and grant the only remaining application for the broadcast facility.

Not only does the FCC have the discretion to approve mergers and other settlements of post-July 1st applications, it should exercise that discretion in favor of such grants in the case of R & S Media, AMBC and like parties. Following the enactment of the BBA in August 1997, numerous attempts were made by numerous

^{2/} For example, because only one application will be accepted for filing by the FCC, no "mutually exclusive applications" ever will be pending at the FCC for channel 257A at Naches, WA and, thus, the legislative "auction" directive for applications "accepted" after July 1, 1997, does not apply.

communications counsel to obtain "guidance" from the FCC staff regarding the processing of post-July 1st broadcast applications. No guidance was forthcoming. No Public Notices were issued. Meanwhile, the FCC continued to open new broadcast filing windows. There were no clear rules promulgated at that time which reasonably could lead applicants to expect that the FCC might subsequently conclude that post-July 1, 1997 mutually exclusive applications might be subjected to automatic auction. Hence, as a matter of fundamental fairness, the FCC should not only construe the BBA as empowering it to approve certain post-July 1st mergers/settlements of applications not yet "accepted" but, moreover, the FCC should exercise its discretion to grant such settlements and applications.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Thompson", with a stylized flourish at the end.

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January 26, 1998